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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 09/774,330 | 01/31/2001 | Kevin T. Jones | M-9899 US | 3634 |
| 33438 | 7590 | 11/01/2004 | EXAMINER | |
| HAMILTON & TERRILE, LLP P.O. BOX 203518 AUSTIN, TX 78720 | | | MEINECKE DIAZ, SUSANNA M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3623 | |

DATE MAILED: 11/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------|--|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/774,330 | JONES ET AL.  |
| | Examiner | Art Unit |
| | Susanna M. Diaz | 3623 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 31 January 2001.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-31 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 31 January 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>1/31/01; 4/17/01</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

1. Claims 1-31 are presented for examination.

Oath/Declaration

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

The inventors did not sign the declaration.

(The Examiner notes that the Applicants likely filed a signed declaration previously. If this is the case, the Examiner kindly requests that the Applicants file another copy of this signed declaration since the Examiner cannot locate it.)

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-16 and 22-31 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and

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(2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the “progress of science and the useful arts” (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

Claims 1-16 recite a useful, concrete, and tangible result; however, they do not incorporate the technological arts, i.e., the recited steps could be performed entirely by hand. Therefore, claims 1-16 are deemed to be non-statutory.

Claims 22-26 recite a computer program product; however, the recited instructions are not expressly recited as causing a processor or computer to perform the recited functionality upon execution of the instructions. Therefore, claims 22-26 are interpreted as reciting software *per se*, which is non-statutory subject matter.

Claims 27-31 are directed to a signal; however, the signal is not recited as being statically embodied in a computer readable medium. Also, the instructions are not expressly recited as executable; therefore, claims 27-31 are interpreted as reciting a signal *per se*, which is non-statutory subject matter.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 25 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 25 recites the limitation "The computer system" in line 1. There is insufficient antecedent basis for this limitation in the claim. For examination purposes, this limitation is interpreted as "The computer program product."

Appropriate correction is required.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-6 and 8-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mukhopadhyay ("Optimal Scheduling of Just-in-Time Purchase Deliveries").

Mukhopadhyay discloses a method for scheduling delivery of material to a manufacturer comprising:

[Claim 1] determining a material requirement for an operation of at least one operation on a manufacturing line (¶ 7); and

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scheduling delivery of material to meet the material requirement from an available inventory of material to the operation on the manufacturing line (¶¶ 7, 48);

[Claim 2] wherein the material requirement includes identified material and a material need-by time (¶¶ 7, 48); and

the scheduled delivery of the material includes scheduled delivery of the identified material prior to the material need-by time (¶¶ 7, 48);

[Claim 3] sending a material request for the material to meet the material requirement to a material source having the material (¶¶ 7, 48); and

wherein the material source is scheduled to deliver the material to meet the material requirement from the available inventory of material to the operation (¶¶ 7, 48);

[Claim 4] wherein the material request includes a plurality of materials to meet a plurality of material requirements to be delivered by the material source, with each material requirement of the plurality of material requirements to be delivered at a specified material delivery time (¶¶ 7, 48);

[Claim 5] wherein the available inventory includes at least one of a group consisting of:

an external inventory; and

an in-house inventory (¶ 7 – External deliveries come from the inventories of local suppliers);

[Claim 6] wherein external inventory comprises at least one of a group consisting of the following:

a supplier inventory; and

a hub inventory (¶ 7 – External deliveries come from the inventories of local suppliers).

As per claims 1 and 8-10, Mukhopadhyay discloses use of the scheduling optimization in a plant that receives parts from various suppliers to manufacture power transformers (¶ 7); therefore, it is understood that the plant must contain at least one manufacturing line. However, Mukhopadhyay does not expressly teach that the plant contains a plurality of manufacturing lines, including manufacturing lines that are either located in at least two factories or manufacturing lines that are in one factory, and wherein at least two operations are on one manufacturing line of the plurality of manufacturing lines. First, *Ex parte Pfeiffer*, 135 USPQ 31 (BdPatApp&Int 1961) states, “As to the rejection of the claims on the prior art references, we do not agree with the appellant that such structural limitations as are not disclosed by the references should be given patentable weight. This argument is applicable to claims drawn to structure and not claims drawn to a method. **To be entitled to such weight in method claims, the recited structural limitations therein must affect the method** in a manipulative sense and not to amount to the mere claiming of a use of a particular structure, which, in our opinion, is the case here.” Whether or not there are a plurality of manufacturing lines versus one single line does not affect the structure or functionality of the claimed invention; therefore, said limitation does not merit patentable weight. Second, even if such limitation were deemed to merit patentable weight, the Examiner asserts that it is old and well-known in the art of manufacturing that many manufacturing facilities

contain multiple manufacturing lines, located at the same or multiple factories, wherein at least two operations are on one manufacturing line of the plurality of manufacturing lines. This distribution of manufacturing functions throughout various manufacturing lines, located either in one facility or multiple facilities, assists in more rapidly and cost-effectively assembling large quantities of sub-portions of an item to eventually create large quantities of the whole item. Since Mukhopadhyay is directed to making the manufacturing process (e.g., of power transformers) more cost efficient, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to adapt Mukhopadhyay's scheduling optimization process to address scheduling among manufacturing facilities containing multiple manufacturing lines, located at the same or multiple factories, wherein at least two operations are on one manufacturing line of the plurality of manufacturing lines in order to further optimize the distribution of manufacturing functions throughout various manufacturing lines, located either in one facility or multiple facilities, thereby assisting in more rapidly and cost-effectively assembling large quantities of sub-portions of an item to eventually create large quantities of the whole item.

Regarding claim 11, Mukhopadhyay discloses use of the scheduling optimization in a plant that receives parts from various suppliers to manufacture power transformers (¶ 7); however, Mukhopadhyay does not expressly teach that "the material requirement is for material for manufacturing a computer system and the available inventory includes material for manufacturing the computer system." Official Notice is taken that it is old and well-known in the art of manufacturing to mass produce computer systems. Both

power transformers and computer systems require the assembly of multiple parts; therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to adapt Mukhopadhyay's scheduling optimization in a plant wherein "the material requirement is for material for manufacturing a computer system and the available inventory includes material for manufacturing the computer system" in order to reap the benefits of this scheduling optimization methodology in a wider range of environments, thereby making such an optimization methodology more marketable and useful to a broader base of customers.

[Claims 17-20] Claims 17-20 recite limitations already addressed by the rejection of claims 1-4 above; therefore, the same rejection applies.

Furthermore, Mukhopadhyay discloses that the breakdown of parts required and delivery schedules are sent to the suppliers daily (¶¶ 7, 48) and the scheduling is optimized using a PC (¶¶ 8, 14, 46, 48); therefore, it is understood that a processor and memory are used to perform the functionality recited in claims 17-20.

[Claims 22-25] Claims 22-25 recite limitations already addressed by the rejection of claims 1-4 above; therefore, the same rejection applies.

Furthermore, Mukhopadhyay discloses that the breakdown of parts required and delivery schedules are sent to the suppliers daily (¶¶ 7, 48) and the scheduling is optimized using a PC (¶¶ 8, 14, 46, 48); therefore, it is understood that a computer program product is used to perform the functionality recited in claims 22-25.

[Claims 27-30] Claims 27-30 recite limitations already addressed by the rejection of claims 1-4 above; therefore, the same rejection applies.

Furthermore, Mukhopadhyay discloses that the breakdown of parts required and delivery schedules are sent to the suppliers daily (¶¶ 7, 48) and the scheduling is optimized using a PC (¶¶ 8, 14, 46, 48); therefore, it is understood that a signal is used to perform the functionality recited in claims 27-30.

[Claim 12] Mukhopadhyay discloses a method for scheduling deliveries of material comprising the step of obtaining a material requirement for an operation of at least one operation on a manufacturing line, the material requirement comprising an identified material and a material need-by time (¶¶ 7, 48). Mukhopadhyay also presents an optimization scheme for insuring that various trucks make their parts deliveries at a precise need-by time – not too early and not too late (¶¶ 9-48). Optimizing delivery times minimizes the costs associated with the storage of parts that arrived too early, lost time incurred by trucks waiting to use the single loading dock at the manufacturing site, delay in manufacturing due to a late delivery of needed parts, etc. The goal of the optimization algorithm is to schedule deliveries such that parts needed earlier arrive before parts needed at a later time and that all parts arrive as close as possible just prior to the point in the manufacturing cycle during which they will be utilized. Mukhopadhyay's optimization strategy is addressed more from the point of view of the manufacturer who has ordered parts from various suppliers; therefore, from the manufacturer's view point, the optimization system performs the steps of identifying a

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next truck scheduled for delivery to the operation, determining whether a following truck scheduled for delivery to the operation after the next truck has a material delivery time before the material need-by time of the material requirement, and when the following truck has a material delivery time before the material need-by time, delaying processing of the material requirement, and when the following truck has a material delivery time after the material need-by time, determining whether a later opportunity to request the identified material exists (i.e., if a delivery is not needed until later, it is requested that the identified material not be delivered until the later time at which it is needed), and when a later opportunity exists, delaying requesting the identified material and scheduling a delivery of the identified material (i.e., if a delivery is not needed until later, it is requested that the identified material not be delivered until the later time at which it is needed).

However, Mukhopadhyay's optimization strategy does not expressly address how suppliers schedule the dispatch of their loaded trucks from the suppliers' respective locations. For example, the truck dispatched from a supplier with parts A and B may or may not necessarily be the truck that actually delivers parts A and B to the manufacturer's site; there could be a consolidation of shipments, transfer to another mode of transportation, etc. before the time the parts leave the supplier and arrive at the manufacturer. Even if a single truck is used throughout the delivery process of given parts from supplier to manufacturer, that truck may schedule earlier deliveries of other shipments to other destinations before arriving at the manufacturer. In other words, the fact that a delivery is scheduled earlier or later at a manufacturer's location does not

necessarily mean that the truck arriving at the manufacturing site was dispatched from the supplier after another truck that arrived earlier. Addressing the limitation of "identifying a next truck scheduled for delivery to the operation, *the next truck originating at a material source*," Mukhopadhyay does teach that "[l]ocal suppliers of raw materials were developed within a radius of 30 miles of the plant" (¶ 7). With such a relatively small area to cover from a delivery aspect, the Examiner asserts that a supplier would likely transport the ordered raw materials on a single truck since the cost of consolidating shipments from various trucks already in-transit (e.g., the cost associated with meeting at a cross-docking location, physically moving and tracking the materials from one truck to another, etc.) would most probably exceed that of dispatching a single truck delivery within such a small radius. Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to utilize Mukhopadhyay's scheduling algorithm under the principal assumption that the next truck scheduled for delivery to the operation is the next truck *originating at a material source* since with such a relatively small area to cover from a delivery aspect (a 30 mile-radius within the manufacturing plant), a supplier would likely transport the ordered raw materials on a single truck since the cost of consolidating shipments from various trucks already in-transit (e.g., the cost associated with meeting at a cross-docking location, physically moving and tracking the materials from one truck to another, etc.) would most probably exceed that of dispatching a single truck delivery within such a small radius.

Furthermore, Mukhopadhyay does not expressly teach that when a later opportunity does not exist, the step of requesting the identified material by adding the identified material to a material request for the next truck and scheduling a delivery of the identified material from the material source to the operation on the next truck. However, Mukhopadhyay does state that freight consolidation has been used with JIT manufacturing to try to lower shipping costs (¶ 4). Freight consolidation may occur at various stages in the delivery cycle, including at the supplier's location. Consolidating shipments at a supplier's location allows one to more efficiently minimize the number of trucks needed to make the maximum number of deliveries in a timely fashion. Since freight consolidation is a common cost-reducing tactic utilized by shippers, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Mukhopadhyay to perform, when a later opportunity does not exist, the step of requesting the identified material by adding the identified material to a material request for the next truck and scheduling a delivery of the identified material from the material source to the operation on the next truck in order to allow the supplier to more efficiently minimize the number of trucks needed to make the maximum number of deliveries in a timely fashion, thereby lowering shipping costs while effectively meeting the delivery requirements of the manufacturer.

[Claims 13-15] Claims 13-15 recite limitations already addressed by the rejection of claim 12 above; therefore, the same rejection applies.

Furthermore, Mukhopadhyay discloses a method for scheduling deliveries of material comprising repeating a series of steps, the series comprising obtaining a material requirement for an operation on a manufacturing line *from a plurality of material requirements*, each material requirement of the plurality of material requirements comprising an identified material and a material need-by time (¶¶ 7, 48), as per claim 13.

Regarding claims 14 and 15, Mukhopadhyay's optimization strategy is repeated at least daily and whenever a change affecting the schedule occurs (¶¶ 7, 14, 48) in order to constantly keep the scheduling strategy running as close to optimal conditions as possible in light of the most current circumstances; therefore the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to repeat all of the steps recited in claim 13 at a fixed time interval (claim 14) or essentially continuously (claim 15) in order to constantly keep the scheduling strategy running as close to optimal conditions as possible in light of the most current circumstances, thereby reaping the greatest cost benefits of such an optimization.

[Claim 16] Claim 16 recites limitations already addressed by the rejection of claims 12 and 13 above; therefore, the same rejection applies.

[Claim 21] Claim 21 recites limitations already addressed by the rejection of claims 13 and 16 above; therefore, the same rejection applies.

Furthermore, Mukhopadhyay discloses that the breakdown of parts required and delivery schedules are sent to the suppliers daily (¶¶ 7, 48) and the scheduling is optimized using a PC (¶¶ 8, 14, 46, 48). The use of a PC is cited as providing extremely fast processing of the optimization algorithm (¶¶ 8, 14, 46, 48). In general, the Examiner asserts that it is old and well-known that the use of a PC is beneficial in performing calculations more accurately and quickly than they would be performed by hand, especially when the calculations involve such complex algorithms and analysis as that disclosed by Mukhopadhyay. Since Mukhopadhyay already suggests the benefits of use of a PC, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Mukhopadhyay to perform all of the recited steps using a PC (including a memory and processor) in order to perform the recited calculations and analysis more accurately and quickly than they would be performed by hand.

[Claim 26] Claim 26 recites limitations already addressed by the rejection of claims 13 and 16 above; therefore, the same rejection applies.

Furthermore, Mukhopadhyay discloses that the breakdown of parts required and delivery schedules are sent to the suppliers daily (¶¶ 7, 48) and the scheduling is optimized using a PC (¶¶ 8, 14, 46, 48). The use of a PC is cited as providing extremely fast processing of the optimization algorithm (¶¶ 8, 14, 46, 48). In general, the Examiner asserts that it is old and well-known that the use of a PC is beneficial in performing calculations more accurately and quickly than they would be performed by

hand, especially when the calculations involve such complex algorithms and analysis as that disclosed by Mukhopadhyay. Since Mukhopadhyay already suggests the benefits of use of a PC, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Mukhopadhyay to perform all of the recited steps using a PC (including a computer program product) in order to perform the recited calculations and analysis more accurately and quickly than they would be performed by hand.

[Claim 31] Claim 31 recites limitations already addressed by the rejection of claims 13 and 16 above; therefore, the same rejection applies.

Furthermore, Mukhopadhyay discloses that the breakdown of parts required and delivery schedules are sent to the suppliers daily (¶¶ 7, 48) and the scheduling is optimized using a PC (¶¶ 8, 14, 46, 48). The use of a PC is cited as providing extremely fast processing of the optimization algorithm (¶¶ 8, 14, 46, 48). In general, the Examiner asserts that it is old and well-known that the use of a PC is beneficial in performing calculations more accurately and quickly than they would be performed by hand, especially when the calculations involve such complex algorithms and analysis as that disclosed by Mukhopadhyay. Since Mukhopadhyay already suggests the benefits of use of a PC, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Mukhopadhyay to perform all of the recited steps using a PC (including a signal) in order to perform the recited

calculations and analysis more accurately and quickly than they would be performed by hand.

9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mukhopadhyay ("Optimal Scheduling of Just-in-Time Purchase Deliveries"), as applied to claim 5 above, in view of Jenkins et al. (US 2002/0188499).

[Claim 7] As per claim 7, Mukhopadhyay does not expressly teach that materials delivered from available inventory are selected from an in-transit inventory. However, Jenkins teaches the tracking of available materials throughout a supply chain, including in-transit inventory, in order to quickly resolve conflicts with respect to product availability when they arise (¶¶ 7-8). Since Mukhopadhyay's scheduling optimization is applied to a just-in-time (JIT) manufacturing environment (in which perfect timing of the arrival of needed materials is crucial for the reasons discussed above), the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to adapt Mukhopadhyay to schedule the delivery of materials from available inventory, including in-transit inventory, in order to facilitate the quick resolution of conflicts with respect to product availability when they arise, thereby minimizing any negative impact to the JIT manufacturing plans when such conflicts arise.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (703) 305-1337. The examiner can normally be reached on Monday-Friday, 9 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703)308-1113.

Any response to this action should be mailed to:

**Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450**

or faxed to:

(703)305-7687 [Official communications; including After Final communications labeled "Box AF"]

(703)746-7048 [Informal/Draft communications, labeled "PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 22202, 7th floor receptionist.

Susanna Diaz
Susanna M. Diaz
Primary Examiner
Art Unit 3623
October 22, 2004